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February 22, 2023

VIA ELECTRONIC FILING

Hon. Elizabeth A. Wolford
Chief United States District Judge
United States District Court
Kenneth B. Keating Federal Building
100 State Street
Rochester, NY 14614

Re: *Seneca Lake Guardian, et al v Greenidge Generation LLC*
Civil Action No. 23-cv-6063

Dear Honorable Wolford:

We represent Greenidge Generation LLC (“Greenidge”) in the above captioned action. The purpose of this letter is to request that the Court stay briefing on Plaintiffs’ Motion for Summary Judgment (Dkt. No. 10).

Plaintiffs filed this action on January 24, 2023 (Dkt. No. 1). They then waited to serve Greenidge until January 30, 2023 (Dkt. No. 8), making Greenidge’s time to respond to the Complaint February 21, 2023. Rather than wait for Greenidge to respond to the Complaint, Plaintiffs took the extraordinary procedural step of filing a Motion for Summary Judgment (Dkt. No. 10) on February 21, 2023 before Greenidge even appeared in this action.¹ Indeed, Greenidge did not appear in the action until later in the day on February 21, 2023 when it timely responded to the Complaint with the filing of a Motion to Dismiss (Dkt. No.13).

Among other grounds, Greenidge’s Motion seeks dismissal under Rule 12(b)(1) of the Federal Rules of Civil Procedure. “Subject matter jurisdiction is a threshold issue that a court must consider before addressing the merits of any particular case.” *See Dembski v. SEC*, 437 F. Supp. 3d 286, 290 (W.D.N.Y. 2020) (citing *Rhulen Agency, Inc. v. Ala. Ins. Guar. Ass’n*, 896 F.2d 674, 678 (2d Cir. 1990)); *Capellupo v. Webster Cent. Sch. Dist.*, No. 13-CV-6481 EAW, 2014 U.S. Dist. LEXIS 170912, at *4 (W.D.N.Y. Dec. 9, 2014) (“if a court lacks subject matter jurisdiction, it cannot reach the merits of the case”). It is therefore appropriate that the Court defer briefing on Plaintiffs’ Summary Judgment Motion until Greenidge’s Motion is decided. It would be a waste of judicial resources and unduly burdensome to Greenidge to respond to Plaintiffs’ Motion for Summary Judgment and address the merits of Plaintiffs’ claim, which Greenidge submits is

¹ Plaintiffs’ Summary Judgment Motion includes 21 exhibits, including 10 factual declarations.

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frivolous, particularly given the multiple and independent grounds as to why this Court lacks subject matter jurisdiction. *See* Dkt. No. 13.

Given the foregoing, we respectfully request that the Court hold Plaintiffs' Motion for Summary Judgment in abeyance until it decides Greenidge's Motion to Dismiss.

Respectfully submitted,

/s/ Yvonne E. Hennessey

Yvonne E. Hennessey

YH:
cc: counsel of record (via ecf)